

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
(Conducted through Virtual Court)
BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.692/Ahd/2019
निर्धारण वर्ष/ Asstt.Year : 2015-16

Dharmeshkumar R. Trivedi 12, Panchvati Society Panchwati Second Lane Ambawadi, Ahmedabad. PAN : ADQPT 4177 J	Vs.	ITO, Ward-5(2)(3) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri Mehul K. Patel, AR
Revenue by :	Shri Kamlesh Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 11/11/2021

घोषणा की तारीख /Date of Pronouncement: 01/12/2021

आदेश/ORDER

PER RAJPAL YADAV, VICE-PRESIDENT:

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-5, Ahmedabad dated 25.02.2019 passed for the Asstt.Year 2015-16.

2. In the appeal memo, the assessee has raised two grounds of appeal against order of the Id.CIT(A). In the first ground of appeal, grievance of the assessee is that the Id.CIT(A) has erred in not condoning the delay in filing appeal without appreciating genuine reasons given by the assessee at the time of appellate proceedings.

3. For adjudicating this issue, we take a brief note of the facts of the case. Assessee is an individual having business income. He efiled

his return of income on 25.3.2017 declaring total income at Rs.4,92,800/-, which was processed under section 143(1) of the Act and thereafter picked up for scrutiny assessment by issuance of notice under section 143(2) of the Act. However, assessee failed to comply with the notice and failed furnish details sought for by the AO. Accordingly, the Id.AO finalized assessment proceedings under section 144 of the Act and assessed the income by making addition of Rs.11,62,000/-. This order was challenged before first appellate authority by filing appeal, which, according to the Id.CIT(A) was late by two months. Before the Id.CIT(A) has filed condonation of delay, contents of which read as under:

“The appellant has received the order approximately on 23.11.2017 and as such the appeal is ought to have been filed on or before 22.12.2017. There is a delay of approximately 2 months which needs to be condoned due to following facts.

(1) The appellant is not conversion with the provision and proceedings of the IT Act and whatever notice was received from the department was handed over to the authorized representative for appearance and necessary compliance. However to surprise to the appellant, on being receipt of the order, the appellant came to know that the authorized representative has not appeared before the learned AO in response to various notices. Thus, the appellant being quite ignorant as well as the certified copy of the relevant bank statement was received only on 22.2.2018, the appeal is filed late. These being the reasonable cause and ther is no fault on the part of the appellant to commit any default under the IT Act, the delay in filing the appeal needs to be condoned to meet the end of justice. As mentioned in the grounds of appeal the addition in respect of particular bank account does not belong to the appellant and account is opened only in A. Y. 2016-17. Thus, the addition being factually bad as well as against the facts and evidence on record and as such to meet the end of

justice, the addition needs to be deleted by condoning the delay in filing the appeal"

However, the Id.CIT(A) was not satisfied with the explanation of the assessee, and after following some judicial authorities, rejected request of the assessee to condone the delay, and accordingly dismissed the appeal of the assessee as non-maintainable as being time barred.

4. With the assistance of the Id.representatives, we have gone through the record carefully. We find that the assessee has filed appeal before first appellate authority which was late by two months. Before us, assessee has filed copy the condonation petition, in which, the assessee has explained the reasons for delay. We are of the view that on seeing quantum of delay being two months days, and the reasons explained by the assessee, the Id.CIT(A) ought to have taken a lenient view in condoning the delay and considered the case of the assessee on merit. We find that expression "sufficient cause" employed in sub-section 3 of section 249 of Income Tax Act provides powers to the Id.Commissioner to condone the delay in filing the appeal before the Commissioner if he is satisfied that the appellant had sufficient cause for not presenting it within that period. We are of the view that the reasons explained by the assessee before the Id.CIT(A) are sufficient enough to condone the impugned delay, and decide the appeal on merit. Though the assessee has given reasons for delay in his petition for condonation of delay, Id.CIT(A) has not appreciated the same in right perspective and not justified in not condoning the delay and dismissing the appeal in *limine*. Therefore, we condone the delay in filing appeal before the Id.CIT(A) and set aside order of the

ld.CIT(A) the remit the file back to the ld.CIT(A) for adjudicating the issues raised in the appeal of the assessee on merit. Needless to mention here that the assessee shall cooperate with the ld.CIT(A) and not seek unnecessary adjournments during the proceedings. The ld.CIT(A) shall adjudicate the case after providing reasonable opportunity of hearing to the assessee.

5. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 1st December, 2021 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated 01/12/2021